

# Submission to the Joint Standing Committee on Migration Inquiry into the migration treatment of people with a disability

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**Prepared by the Australian Council of Social Service on behalf of the  
COSS network:**

- Australian Council of Social Service (ACOSS);
- ACT Council of Social Service (ACTCOSS);
- NSW Council of Social Service (NCOSS);
- South Australian Council of Social Service (SACOSS);
- Northern Territory Council of Social Service (NTCOSS);
- Queensland Council of Social Service (QCOSS);
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## **1. Who we are**

The Councils of Social Service in Australia are the peak bodies representing the needs and interests of service providers and their clients in the non-profit social service sector. Our members comprise community service providers, professional associations and advocacy organisations. We provide:

- independent and informed policy development, advice, advocacy and representation about issues facing the community services sector;
- a voice for all Australians affected by poverty and inequality; and
- a key coordinating and leadership role for non-profit social services across the country.

We work with our members, clients and service users, the sector, governments, departments and other relevant agencies on current, emerging and ongoing social, systemic and operational issues.

This submission draws on our experience with members in the disability, culturally and linguistically diverse (including migrant and refugee) sectors; and from our ongoing policy and advocacy work towards a fair and equitable taxation system in Australia. ACOSS has also endorsed the Sector Wide Position Statement on the Migration Act and Disability (see <http://www.disabilityrightsnow.org.au/node/14>).

## **2. Ensuring Australia meets its human rights obligations**

First and foremost, the COSS network is committed to ensuring that Australia meets its obligations towards the protection and promotion of human rights. Our work on human rights has focused on the rights and needs of low income and disadvantaged Australians and the role of the Australian community and welfare sector in rights protection. There is widespread support for human rights principles within the community and welfare sector, also. Many organisations have embraced human rights principles in their organisational values, mission statements and service delivery models. Others continue to use the language of social justice, social inclusion, equality and fairness. Human rights, social justice and social inclusion frameworks are complementary and mutually reinforcing and these alternative frameworks are, and must be, human rights congruent and compliant. In addition, we have worked to ensure that those rights are protected through domestic measures such as human rights legislation, through ACOSS and other COSS submissions to the National Human Rights Consultation earlier this year. In particular, we have supported the enactment of a human rights act which would bind community organisations performing public functions and give other organisations the ability to 'opt-in' to compliance.

Yet compliance with human rights within our communities requires strong leadership from governments. At present, Australia's policies in relation to the treatment of people with disabilities under migration law put us at odds with our obligations under human rights principles. In particular, ratification of the UN Convention on the Rights of Persons with Disabilities requires the promotion of a human-rights respecting culture in Australia with a focus on those most disadvantaged. However this focus is undermined by the health requirement in the *Migration Act 1958* which seems to have the overall effect of denying or reducing the possibility of people with disabilities to migrate to Australia.

We share the concerns of our colleagues in the disability and refugee/migration sectors that the current laws relating to the treatment of people with a disability under the Migration Act are discriminatory to people with disability. In particular, they do not provide fair opportunities to people with a disability to attain residency on an equal basis with others. We agree with the National Ethnic Disability Alliance when it argues that the current migration law and processes treat people with disability solely as a cost burden on Australia's health system, disregarding the important economic and social contributions that are made to Australia by all people with disability.

The existing policies and processes are flawed, and are at odds with Australia's international human rights obligations. Moreover, the current migration health assessment processes are arbitrary; lacking in transparency; and limited in the scope of their assessment. The assessment processes do not take into account whether or not services will be accessed; or the ability of the individual to pay for the costs that may be attributable to a person's illness or disability.

Existing processes must be equitable to ensure a transparent, consistent and fair process for migrants and refugees with disability. We urge the Committee to make recommendations that will actively achieve this objective. In particular, the principles of non-discrimination and human rights must be applied directly and in full to the operation of the Migration Act 1958.

### **3. Ensuring a fair and equitable Australian taxation system**

A further concern about the migration treatment of people with a disability relates to the inequality of migrants under Australia's tax and transfer (social security) system. Under the current system, migrants with a disability are ineligible for the Disability Support Pension (DSP) until they have been in Australia for 10 years. This provision clearly discriminates against migrants with a disability in the provision of social security, particularly as it applies even to those disabilities that are acquired in Australia after migration.

The main purpose of social security is to redistribute resources towards those in greatest financial need. It also facilitates participation in the labour market and society and supports caring. Its redistributive function has two aspects – providing a safety net for those on

inadequate incomes (a vertical equity goal because it involves redistribution from those with more to those with less resources) and redistribution across the life course (a horizontal equity goal since it involves redistribution between households with different needs, for example from smaller to larger households). Since transfers are in effect negative income taxes, the tax and social security systems are two sides of a single coin.

However, the Australian social security system is distinguished by its **safety net objective** which is to assist individuals and families to achieve a minimum acceptable living standard and the capability to participate in the economy and society. The safety net role comes into play when people are unable to secure enough income from earnings or other sources to meet socially defined basic needs; that is, to avoid poverty. The safety net role dominates the Australian social security system because Australia lacks a national social insurance scheme. Social security payments are financed from general taxation rather than employer, employee and Government contributions and are paid at low flat rates rather than as a proportion of previous wages. One advantage of the Australian model is that it is cost effective in reducing poverty. However, the low level of payments (when account is taken of overseas social insurance schemes) is one reason that overall poverty levels in Australia are higher than in most countries of the European Union.

Another 'horizontal equity' function of the social security system is to compensate people for the additional costs of a disability. This, along with access to community and health services, is necessary to enable people with disabilities to participate fully in society. One advantage of cash payments for this purpose (whether tied to specific services or otherwise) is that people with disabilities have more control over how the resources are used, and the resources are used more efficiently. Since payments such as Mobility Allowance perform more than a safety net function, they should not be as strictly targeted as safety net payments. For example, from a horizontal equity viewpoint it is appropriate to provide such support to a full time employee with a disability to compensate for their additional costs of employment such as equipment or taxi fares. Carer Allowance performs a parallel function for carers of people with disabilities.

ACOSS has long advocated for the equitable treatment of income support recipients under Australia's system of benefits and the approach to migrants with a disability is an important element of this policy. The Future Tax System Review Panel (chaired by Treasury Secretary Dr Ken Henry) presents an opportunity for reform of Australia's taxation and social security systems in the interests of fairness and equity and ACOSS has made a number of submissions to the Henry Review in this regard (available at <http://www.acoss.org.au/Publications.aspx?displayID=4&subjectID=6>).

The entitlement to social security of people with disabilities must be considered within this broader review. As a fundamental right to living standards, that entitlement exists irrespective of a person's status as a migrant. Yet the requirement that migrants have been in Australia for 10 years before their entitlement can be realised goes against the principles of equity and fairness that should underpin our social security system. The problem with the 10 year wait for migrant eligibility for the DSP is that this leaves migrants with disabilities

without an appropriate payment under the social security system. Alternative payments such as Newstart Allowance are not appropriate in many cases as it has a work test and does not recognise the costs of disability.

The 10 year requirement also undermines the capacity of our social security system to provide a safety net against poverty and disadvantage in Australia. ACOSS has argued before the Tax Review Panel that social security payments should be benchmarked to an Australian Minimum Standard of Living - that is, the minimum income typically needed for households comprising a single adult, a couple, a sole parent, and children of different ages respectively - to avoid poverty and live decently in accordance with general community standards. The Australian Minimum Standard of Living should be based on the best available research on the living costs and financial circumstances of low income Australians. These include:

- Budgets developed by experts to reflect the minimum expenditures required to achieve a decent standard of living (Budget Standards);
- Research on the actual living standards of recipients of the different payments, including access to socially defined 'essentials of life' and financial stress indicators; and
- Poverty lines.

The establishment of a minimum standard of living upon which our social security system would be based would ultimately replace the separate pension and allowance levels of payment. From this standard, the distinction between allowances and pensions would go, so that the same basic eligibility requirements would be applied to all people of working age on social security payments (including such factors as age and period of residence). There would be no need for a 10 year wait for a higher payment because all payments would be based on the same minimum living standard. Costs of disability would be recognised *via* a separate 'costs of disability' supplement, which would not have such a waiting period either. Such a reform would resolve the problem of discrimination in the eligibility requirements for DSP by migrants with a disability.

*Recommendation:* We recommend that the Joint Standing Committee recommend to the Tax Review Panel a reform to the tax and transfer system based upon a minimum standard of living allowance and a consequent restructuring of the social security system using upon basic and supplementary payments with non-discriminatory eligibility requirements.

#### **4. Recommendations**

We reaffirm the recommendations made by our colleagues in social and community service, disability and migration sectors, as outlined in the Sector Wide Position Statement on the Migration Act and Disability. We call on the Joint Standing Committee on Migration's Inquiry to recommend:

- i. Full application of the Disability Discrimination Act 1992 to the Migration Act 1958 health assessment to remove the potential for any direct or indirect discrimination against refugees and migrants with disability;
- ii. Improved consistency, transparency and administrative fairness for migrants and refugees with disability applying for an Australian visa; and
- iii. Withdrawal of the Australian interpretive declaration made upon ratification of the United Nations Convention on the Rights of Persons with Disabilities pertaining to the health requirements for non nationals.
- iv. That the principles of non-discrimination and human rights are applied directly and in full to the operation of the Migration Act 1958.
- v. That the Joint Standing Committee recommend to the Future Tax System Review Panel a reform to the tax and transfer system based upon a minimum standard of living allowance and a consequent restructuring of the social security system using basic and supplementary payments with non-discriminatory eligibility requirements.